

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EVERLAST SOLUTIONS CORP.,

Plaintiff,

-vs-

ANSWER

**STATE FARM FIRE AND CASUALTY
COMPANY,**

Case No.: 1:23-cv-07356

Defendant.

Defendant State Farm Fire and Casualty Company (“State Farm”), by its attorneys, Barclay Damon LLP, as and for its Answer to Plaintiff’s Complaint (“Complaint”), alleges as follows:

NATURE OF CASE

1. Admits the existence of the underlying *Sarango* action, bearing Index No. 713975/2023 filed in the Supreme Court of the State of New York, Queens County, which speaks for itself. The remaining allegations contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies the remaining allegations contained in Paragraph 1 of the Complaint.

2. The allegations contained in Paragraph 2 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies that coverage is owed to Plaintiff and further denies that Plaintiff is entitled to any alleged damages asserted against it.

PARTIES

3. State Farm denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint.

4. Admits that it is an insurance company duly authorized to transact insurance business in the State of New York. State Farm further admits that its principal place of business is at One State Farm Plaza, Bloomington, Illinois 61710-0001.

JURISDICTION AND VENUE

5. The allegations contained in Paragraph 5 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint.

6. The allegations contained in Paragraph 6 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint.

7. The allegations contained in Paragraph 7 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint.

8. The allegations contained in Paragraph 8 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint.

FACTUAL BACKGROUND

A. The Agreement between L.E.S. General Construction Inc. and Everlast

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint.

11. Denies the allegations contained in Paragraph 11 of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint.

B. The State Farm Policy

13. Admits that it issued a policy of insurance to L.E.S. General Construction, Inc., bearing policy number 92-EA-B069-4 (the “Insurance Policy”), but denies Plaintiff has fully and accurately set forth the contents of the Insurance Policy, which speak for itself. State Farm denies the remaining allegations contained in Paragraph 13 of the Complaint.

14. Admits that it issued the Insurance Policy, but denies Plaintiff has fully and accurately set forth the contents of the Insurance Policy, which speaks for itself. State Farm denies the remaining allegations contained in Paragraph 14 of the Complaint.

15. Denies the allegations contained in Paragraph 15 of the Complaint.

16. Denies the allegations contained in Paragraph 16 of the Complaint.

17. The allegations contained in Paragraph 17 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint.

18. Denies the allegations contained in Paragraph 18 of the Complaint.

C. The Accident and the Underlying Suit

19. Admits the existence of the complaint in the underlying *Sarango* action, which speaks for itself. The remaining allegations contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.

20. Admits the existence of the complaint in the underlying *Sarango* action, which speaks for itself. The remaining allegations contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint.

21. Admits the existence of the complaint in the underlying *Sarango* action, which speaks for itself. The remaining allegations contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint.

22. Admits the existence of the complaint in the underlying *Sarango* action, which speaks for itself. The remaining allegations contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint.

D. Everlast's Request to State Farm to Provide Defense and Insurance Coverage in Regard to the Underlying Suit and State Farm's Rejection

23. State Farm admits the existence of the correspondence dated July 27, 2023, which speaks for itself. State Farm denies the remaining allegations contained in Paragraph 23 of the Complaint.

24. State Farm admits that it has not assumed the defense of Plaintiff in the underlying *Sarango* action because Plaintiff is not an insured under the Insurance Policy or otherwise entitled to a defense under the Insurance Policy. State Farm denies the remaining allegations contained in Paragraph 24 of the Complaint.

25. The allegations contained in Paragraph 25 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies that Plaintiff is entitled to any rights and benefits under the Insurance Policy.

26. The allegations contained in Paragraph 26 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies the allegations contained in Paragraph 26 of the Complaint.

27. The allegations contained in Paragraph 27 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies the allegations contained in Paragraph 27 of the Complaint.

AS AND FOR A FIRST CAUSE OF ACTION

28. Repeats and realleges its respective responses those paragraphs repeated and realleged in Paragraph 28 of the Complaint.

29. The allegations contained in Paragraph 29 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies the allegations contained in Paragraph 29 of the Complaint.

30. Denies the allegations contained in Paragraph 30 of the Complaint.

31. Denies the allegations contained in Paragraph 31 of the Complaint.

32. Denies the allegations contained in Paragraph 32 of the Complaint.

33. Denies the allegations contained in Paragraph 33 of the Complaint.

AS AND FOR A SECOND CAUSE OF ACTION

34. Repeats and realleges its respective responses those paragraphs repeated and realleged in Paragraph 34 of the Complaint.

35. The allegations contained in Paragraph 35 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies the allegations contained in Paragraph 35 of the Complaint.

36. Denies the allegations contained in Paragraph 36 of the Complaint.

37. Denies the allegations contained in Paragraph 37 of the Complaint.

AS AND FOR A THIRD CAUSE OF ACTION

38. Repeats and realleges its respective responses those paragraphs repeated and realleged in Paragraph 38 of the Complaint.

39. The allegations contained in Paragraph 39 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies the allegations contained in Paragraph 39 of the Complaint.

40. Denies the allegations contained in Paragraph 40 of the Complaint.

41. Denies the allegations contained in Paragraph 41 of the Complaint.

AS AND FOR A FOURTH CAUSE OF ACTION

42. Repeats and realleges its respective responses those paragraphs repeated and realleged in Paragraph 42 of the Complaint.

43. The allegations contained in Paragraph 43 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, State Farm denies the allegations contained in Paragraph 43 of the Complaint.

44. Denies the allegations contained in Paragraph 44 of the Complaint.

45. Denies the allegations contained in Paragraph 45 of the Complaint.

46. Denies the allegations contained in Paragraph 46 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

47. Upon information and belief, the claims and/or causes of action alleged in the Complaint must be dismissed because Plaintiff lacks standing to pursue the relief requested against State Farm.

SECOND AFFIRMATIVE DEFENSE

48. Upon information and belief, the claims and/or causes of action alleged in the Complaint must be dismissed by reason of lack of privity of contract between Plaintiff and State Farm.

THIRD AFFIRMATIVE DEFENSE

49. Upon information and belief, the claims and/or causes of action alleged in the Complaint must be dismissed because all other insurance has not been exhausted.

FOURTH AFFIRMATIVE DEFENSE

50. Upon information and belief, the claims and/or causes of action alleged in the Complaint must be dismissed based on the applicability of other insurance.

FIFTH AFFIRMATIVE DEFENSE

51. Upon information and belief, the claims and/or causes of action alleged in the Complaint must be dismissed because coverage is subject to terms and conditions set forth in the Insurance Policy referenced in Paragraph 13 above, which are incorporated by reference herein in their entirety.

WHEREFORE, Defendant State Farm demands judgment as follows:

- A. Denial of all relief sought in the Complaint and judgment in State Farm's favor; and
- B. Such other, further and different relief which to this Court may seem just, proper and equitable.

DATED: December 13, 2023

BARCLAY DAMON, LLP

By: /s/ Mark T. Whitford Jr.
Mark T. Whitford, Jr.

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